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THE following letters, which originally appeared in the National Intelligencer, during the past autumn, are republished at the instance of a number of respectable friends, whose opinions fortify our own, of the importance of the topics discussed in them.

Security of Property—Continued.

That it is promotive of delay is most obvious from a single consideration. In proportion to the difficulty of obtaining the concurrence of twelve men will be the difficulty of drawing an action to a close; and the history of courts proves that jury after jury is frequently dismissed from their inability to agree.

In proportion to the delay will be the expence, in addition to other sources of expence. It is self evident that the time consumed in a jury trial by twelve jurors, three or four judges and attending officers of the court, will occasion a much greater expence than the expence attending a body of three arbitrators.

So obvious are these considerations, that it is superfluous further to illustrate them. The good sense of every intelligent mind, unfettered by deep rooted prejudice or interest, must perceive that the unwieldy machinery of a jury trial is necessarily promotive of a great waste of time and money, compared with the simple principles of arbitration.

The result of these remarks is that property is not at present adequately secured.

That, to give it this security, and to eradicate the greater portion of frauds existing among men, it is necessary to establish a plain and concise code, in which the unmeaning or obscure jargon of the law shall be rejected.

And that the principle of arbitration should, in civil cases, be substituted in the room of the jury trial.

Our political code has undergone a decisive reform. Our statesmen have, with a fearless hand, established our governments upon new principles; and every step they have taken, has advanced the public good. Under the sacred name of liberty they resolutely determined to throw aside all temporising. Perceiving the indissoluble connection between government, and the protection of individual rights, they concluded those systems unworthy of adoption or imitation under which these rights were the sport of tyrants. Events have shewn that they thought correctly, and by their reforms liberty has been placed on an adamant, whose strength time only serves to increase.

On one subject alone they seem to have been irresolute. They hesitated to establish a new system in relation to the rights of property. So vast is this object, and so intimately interwoven with the happiness of every member of society, that we shall but imperfectly reap the fruits of our revolution, unless the principles upon which it was conducted shall be applied to it. On them will depend the secure enjoyment by every man of the fruits of his labour, and the prevalence of morals. For so radically vicious is the present system, that it is no less fertile in the production of fraud, than feeble in accomplishing the object for which it was devised.

So sensibly too are the rights of property felt by every man, that we shall in vain expect a complete satisfaction with our political institutions, however preservative of freedom, unless these rights are adequately secured; and though there may be no real connection between the one and the other, events will shew that a general spirit of discontent with respect to the laws that *regulate* property will soon extend itself to the systems of government under which they are allowed. The mind of the citizen will not discriminate between them. Ascribing the evils he feels to the government, discontent will run into hatred, and he will readily lend his arm to subvert it.

There are some evils of a local and temporary nature that admit of partial cure; but there are others which deny all palliatives, and which time or quacking only serve to aggravate. Such is the evil of which we now so justly complain. Civilised man owes so much of his happiness to the acquisitions of his labour, whose secure enjoyment he views as the solace of his declining years, that however he may prize freedom, he will be apt to view it as a doubtful blessing unless it protects his property and labor. Let then the enlightened friends of liberty devote to this subject the attention it so richly merits. We know the object is an arduous one. But does the ambition of the patriot ever, when the public good requires it, shrink from effort or danger; are they not, on the contrary, the very elements of the noble sentiment which fills his heart?

LETTER FIFTH.

The *last* object which requires your particular attention, is the *punishment of crimes*.

It will not occasion much surprise to a mind, well stored with the facts of history, that the criminal codes of Europe are unjust in principle, and imperfect in operation. Having originated in periods of but little knowledge, and in conditions of society not very dissimilar from the savage state, they appear to have been generally the offspring of sentiments altogether repugnant to those which ought to characterise a well organised republican government. The leading motive of savage life is revenge; and in proportion as societies approach this state they appear to be actuated by a kindred passion. From its nature it magnifies the turpitude of offences, it overlooks all discrimination arising from degrees of guilt, and, hurried on by infatuated feeling, delights in sanguinary expiation. Where the laws are ill-defined, and legal restraints but imperfect, the temptation to violate the rights of others, gathering strength from the hope of impunity, leaves, perhaps, no other effectual remedy than the terrors of a sanguinary code.

It was under the influence of such circumstances that the English nation established her code of criminal laws. Soon passing, however, from the dark ages to great commercial importance, the system underwent a radical change with a change of circumstances. The passion for gain becoming ascendant over all others, and as it were filling the hearts of all classes, property became more an object of cupidity, and efforts were multiplied to acquire it. Its vast accumulation in particular hands at once impoverished a large class of the community, and offered them objects seductive of their integrity. The oppression of the great, powerfully aided by unjust monopolies established by governments, by producing too general an impression that the rich had unfairly acquired their possessions, loosened the sanctions by which they were held; and he who violated them became more careful to avoid exposure, than repugnant to the perpetration of crime. In such a state of things, listening more to the suggestions of passion than reason, legal crimes were multiplied; invasions of property were punished with the same severity with murder; and in the infliction of punishments the gradations of vice were lost sight of.

Such is the system which it fell to our lot to receive; and which, with too little variation, yet remains in many of the states.

Some of our best citizens, have, from time to time, awakened the attention of legislators to this subject; but it must be acknowledged that it has not yet received that deliberate and enlarged consideration to which it is eminently entitled.

Let it not be said the subject is unimportant. Superficial must be the understanding that treats it as such.

The moral revolution, effected by the United States, is not to be considered as composed of shreds and patches, heterogenous as the materials of chaos. It rests on a few great principles which require universal application. In vain are principles embraced in theory, without being carried into practice. We may in such a case, possess the *form*, but the *substance* of happiness will be wanting.

One of these principles is to promote, in the highest practical degree, the happiness of the whole community. This can only be effected by doing justice to all men. Any system of laws, which deviates from this principle, will of necessity produce two effects; injustice to particular individuals directly affected; and injury to the whole society, from the legal establishment of incorrect principles. It has ever been a question which affects each other the most, government or morals; and the question remaining unsolved may be considered as tolerable proof of the equal influence of each. How important, then, does it become for governments in laying down rules for the repression of vice, to adhere themselves to principles founded in justice? Under the influence of unjust principles we have seen states of society in which murder and theft have been venial offences. If nothing is more true, as applicable to individuals, than that the least departure from rectitude of conduct is apt to be followed by aberrations still wider and wider; how much greater is the danger, that, under the fatal influence of governments wielding the whole physical force of communities, a small departure from principle will be made the basis on which still greater departures will be justified and practised. Let it further be recollected that manners, once contaminated, are often irretrievable. The history of the world, and particularly the mournful records of the French revolution, prove the inveteracy of habits practised for ages. Never did mankind behold a brighter era than shone at the commencement of that revolution. Liberty descended in the shape of an Angel. But a few fleeting years are past, and the nation has relapsed into a slavery, more gilded perhaps, but certainly not less abject, than that of the darkest ages.

Let my country take warning from these instructive lessons. Let her learn that as the first step from virtue is ruin to female fame, so one false principle, adopted by a nation ramified into all the evils which time uniformly developes, may subvert the fairest fabric of human wisdom.

On this subject, fortunately for us, the opinions of the enlightened and liberal of all nations, coincide in the leading principles which ought to determine the conduct of legislators. A few plain axioms, easy of apprehension, have been universally received. These are 1. That the prevention of crimes is the sole end of government; 2. That every punishment, which is not absolutely necessary for that purpose, is a cruel and tyrannical act; and 3. That every penalty should be apportioned to the offence.

From these leading principles, the following inferences have been drawn; 1. That the punishment of crimes should be prompt and certain—2. That pardons should be rarely, if ever, interposed. 3. That, in order to insure a certainty of punishment, and to avoid the necessity of pardons, punishments should rather be too light than too severe. Facts have shewn that under a code of laws, founded on these principles, crimes have been few; while, under a sanguinary system, they have invariably become more numerous and atrocious. The English code is the most sanguinary of Europe, and in that kingdom by far more crimes are perpetrated than in any equal population in the world.

"Let us examine," says Mr. Bradford of Pennsylvania, in a very valuable tract written some years since, "the situation of England, where an opposite principle is adopted, and where the terror of death is on all occasions resorted to as the surest means of preventing crimes.

"Blackstone in his commentaries stated the number of capital crimes (that is, of felonies ousted of clergy) at 160. Since that time they seem to have increased; for, in 1786, Capel Lofft enumerates and states them as follows:

Felonies without clergy	176
Felonies within clergy	65

Jebb on Pris. 96.

"Amidst this multitude of sanguinary laws, atrocious crimes are very frequent; and the severity of the punishment, by being familiar, is no longer an object of terror, and by exciting hopes of impunity, has become the parent of crimes. "I cannot tell," says Dr. Goldsmith, "whether it is from the number of our penal laws, or the licentiousness of our people, that this country should shew more convicts in a year than half of the dominions of Europe united." Wederborn, an intelligent German, who lately visited England, assures us, that the punishment of death is more frequently inflicted in England, than in all Europe together, in the same space of time. Hence it is, that executions lose all the terrors which attend them in other countries. 1. vol. p. 75. The author of *Thoughts on Executive Justice*, thus describes the situation of England in 1785; "No civilized nation that I know of, has to lament, as we have, the daily commission of the most dangerous and atrocious crimes; insomuch that we cannot travel the roads, or sleep in our houses, or turn our cattle into the fields, without the most imminent danger of thieves and robbers. These are increased in such numbers, as well as licentiousness, that the day is now little less dangerous than the night." P. 4. One of the English prints, 9th November, 1784 says, "If robbers continue to increase as they have done for some time past the number of those who rob will exceed that of the robbed."

"These representations are confirmed by the declarations of the solicitor general and Mr. Townsend, in the house of commons in the same year. They affirm, that in the course of the winter, every day furnished some fresh account of daring robberies, or burglaries being committed; that few persons could walk the streets at night, without fear, or lie down in safety in their beds; for that gangs of six, eight, ten, or twelve persons together, made it a practice to knock at doors, and immediately to rush in and rob the house." 18 Parl. Reg. p. 83. 521. Compare this with the situation of Copenhagen, where night robberies are never heard of.

"The number of persons executed in England, may be seen in the tables already referred to. In the Lent Circuit only, no less than two hundred and eighty-six persons were capitally convicted in 1786, and the annual amount of those transported is from nine hundred and sixty to a thousand.

"It is needless to make observations on these striking facts, which prove conclusively, that the severity of the laws, instead of preventing, is frequently the cause of crimes. The humanity of mankind revolts at a strict execution of them; and the hopes of impunity become a source of temptation. To this, Mr. Howard, among others, traces the mischief: "and yet" he adds, "many are brought by it to an untimely end, who might have been made useful to the state." Laz. 221. No one will deny the justice of this last observation, when they learn from the mouth of the solicitor general of England, "That of those who are executed, eighteen out of twenty do not exceed twenty years of age." 18 Parl. Reg. 22.

"It is difficult to conceive how a free, humane, and generous people should have so long endured this weak and barbarous policy; or why America should be fond of retaining any part of a system, as ineffectual as it is severe!"

Compare the codes of other nations with that of England.

In China, whose population exceeds one hundred millions, the only crimes punished with death are murder and treason, and we are informed that only ten persons are executed in a year.

In 1768, in Russia the punishment of death, except for treason, was abolished, and travellers in that country concur in the declaration that the people are as secure in their persons and property, as they were under the bloody code that formerly prevailed.

Speaking of the effect of the reformed code of Tuscany, General Lee says: "When the present grand duke ascended to the ducal throne, he found in Tuscany the most abandoned people of all Italy, filled with robbers and assassins. Every where, for a series of years previous to the government of this excellent prince, were seen gallows, wheels, and tortures of every kind; and the robberies and murders were not at all less frequent. He had read and admired the marquis of Beccaria, and determined to try the effects of his plan. He put a stop to all capital punishments, even for the greatest crimes; and the consequences have convinced the world of its wholesomeness. The galleys and slavery for a certain term of years, or for life, in proportion to the crime, have accomplished, what an army of hangmen with their hooks, wheels and gibbets, could not. In short, Tuscany, from being a theatre of the greatest crimes and villainies of every species, is become the safest and best ordered state of Europe."

In Sweden, it appears from Mr. Chateau, that great reform in the penal code has been attended with the happiest effects.

In Denmark, the code is so mild that the punishment of death is rarely inflicted; and yet Mr. Howard informs us that "night robberies are never heard of in Copenhagen."

In the dominions of the Emperor of Germany, without any permanent change of the penal code, an imperial requisition to the judges "to be mild in their sentiments, and never to inflict capital punishments without necessity," has been followed by the best effects.

"The punishment of hard labor," says Mr. Bradford, "which is the correction inflicted (and inflicted with great mildness) upon all crimes in Holland, except those of a very high degree, is attended with the most beneficial effects. These result principally from the excellent management which prevails in the Rasp and Spin Houses. Mr. Howard paid particular attention to these wise and benevolent institutions, and he informs us, that many have been reformed, and have come out of the Rasp Houses sober and honest; and that some have even chosen to continue to work in them after their discharge. The great object attended to in these bettering houses (as they are very properly called) is to reclaim and reform the criminal; and the consequence is, that by checking the young offender in his first attempts, gross crimes are prevented. Accordingly we find, that executions are very rare, the annual average in all the United Provinces, being from four to six.

"In Amsterdam, which contains above 250,000 people, there were but six persons executed in the twelve years preceding 1787. I find that there were in the same time no less than five hundred and seventy-two persons hanged or burnt in London and Middlesex; and of these at least three fourths were under twenty years of age. Even the smaller offences do not greatly abound in Holland: and the success of these mild institutions confirms the great principle which is the motto of this work!"

After weighing the force of these facts no correct nor humane mind will hesitate to subscribe to the following remarks of the same writer.

"One would think, that, in a nation jealous of its liberty, these important truths would never be overlooked; and, that the infliction of death, the highest act of power that man exercises over man, would seldom be prescribed, where its necessity was doubtful. But on no subject has government, in different parts of the world, discovered more indolence and inattention, than in the construction or reform of the penal code. Legislators feel themselves elevated above the commission of crimes which the laws proscribe: and they have too little personal interest in a system of punishments, to be critically exact in restraining its severity. The degraded class of men, who are the victims of the laws, are thrown at a distance which obscures their sufferings, and blunts the sensibility of the legislator. Hence sanguinary punishments, contrived in despotic and barbarous ages, have been continued, when the progress of freedom, science, and morals, renders them unnecessary and mischievous: and laws, the offspring of a corrupted monarchy, are fostered in the bosom of a youthful republic.

"But it is pleasing to perceive, that of late, this indolence has not been able to resist the energies of truth. The voice of reason and humanity has not been raised in vain. It has already "forced its way to the thrones of princes;" and the impression it has made on the governments of Europe is visible in the progressive amelioration of their criminal codes. A spirit of reform has gone forth—the empire of prejudice and inhumanity is silently crumbling to pieces—and the progress of liberty, by unfettering the human mind, will hasten its destruction."

Notwithstanding the force of these eloquent remarks, and the acknowledged truths they enforce, it is still a reproach to many of the states that compose our union that they have, from the indolence so constantly attendant on the discharge of public as well as private duty, failed to embrace the most auspicious period for the amelioration of their criminal codes. Without indulging an unavailing regret at the passage of opportunities unimproved, it becomes the duty of the patriotic citizen, in the best season which can ever now occur, to draw the public attention to measures which reason no less than experience enforce.

On this reform the morals of our citizens, and the purity of our national character greatly depend. Interest, humanity, and national glory unite in recommending it. Shall it be said that emperors and kings are more enlightened, liberal and humane than republics? Shall it be said, that among a people, where the life of man is the most valuable, the laws are the least solicitous to protect it? While the old world, amidst all its corruptions, is shaking off the chains of prejudice, shall a rising empire, in the vigor of virtue, fasten them on her citizens with stronger rivets? Shall it be the reproach of the freest communities on earth, that while slaves are held by cords of silk, their citizens require fetters of iron?

No! There is an elevation of soul in my countrymen, that, once awakened, will disdain an acquiescence in the degraded state to which their criminal code has reduced them. At the call of their eminent men, whose virtues and talents have deservedly won them the confidence of their fellow citizens, they will follow the bright example so illustriously set by several of their sister states, and many of the powers of Europe.